

Co-Chair Senator Tom Courtney  
Co-Chair Senator Mary Lundby  
Chair Representative Dwayne Alons  
Representative Joe Hutter, VC  
Representative Vicki Lensing, RM  
Senator Michael Connolly  
Senator Ron Wieck  
Representative Clel Baudler  
Representative George Eichhorn  
Representative Scott Raecker  
Representative Roger Thomas



Representative Wes Whitead  
Representative Cindy Winckler

State Capitol  
Des Moines, IA 50319  
LSA 515-281-6766  
Fax 515-281-6625

---

11/7/2005

THE HONORABLE THOMAS MILLER  
Iowa Attorney General  
Department of Justice  
Hoover State Office Building

Re: Bidding procedures-service contracts for the inspection of permanently moored vessels.

Dear Attorney General Miller:

At its November 1, 2005 meeting the Government Oversight Committee voted to request your opinion concerning the legal implications of a bid process used by the Department of Natural Resources (DNR) to select an "inspection program coordinator" as part of permanently moored vessels (PMV) program to inspect casino "riverboats". The successful bidder in the process, Marine Safety Experts, Inc., was active in the creation of the inspection manual which provides the requirements and details of the actual inspection process; that manual was adopted by reference by the department. The successful bidder also participated in the rulemaking process the department conducted to develop administrative rules for the PMV program.

The low bid on this contract was provided by an Iowa company. However, under the scoring criteria used by the department less weight was given to cost issues and more weight was given to experience and level of services issues. Ultimately, the contract was awarded to an out-of-state vendor who provided the highest bid. The fact situation is more fully detailed in the attached materials.

The following questions are posed for your consideration:

1. Is it an impermissible conflict of interest for a person to participate in the development of a government program and then bid on a contract to administer that same program?
2. In selecting a vendor to provide a service to what extent may a government agency rely on factors other than price?
3. What weight should be given to the preference accorded to Iowa bidders for a service contract?

I've attached some background material that sets out the situation and details the process and the applicable rule. The first is a brief, thumbnail overview of the initial Oversight meeting discussion; second is the written response to that meeting by the Department of Natural Resources. The remaining material includes the RFP, the DNR evaluation and some supporting

documentation, including Executive Order 25 and a review by the Department of Administrative Services.

If I can be of any assistance or provide any information, please contact me at 281-3084.

Respectfully submitted on behalf of the Committee,

Joe Royce, Legislative Services Agency

cc: Co-Chair Senator Tom Courtney  
Co-Chair Senator Mary Lundby  
Chair Representative Dwayne Alons  
Representative Joe Hutter, VC  
Representative Vicki Lensing, RM